



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended:	Enrolled	Bill No:	AB 911
Tax:	Sales and Use Income	Author:	Chu
Related Bills:	AB 1614 (Klehs)		

BILL SUMMARY

This bill would delete the provision that specifies that a taxpayer may not file a claim for refund for any amounts paid in connection with the interest penalty imposed under the sales and use tax amnesty program. The bill also contains other income tax amnesty-related provisions that fall under the purview of the Franchise Tax Board (FTB).

ANALYSIS

Current Law

Under California's recent tax penalty amnesty provisions, Section 7074 imposes a 50% interest penalty when an underpayment of tax is found to be due during a period in which amnesty could have been requested (in other words, the amount of interest that accrues on an underpayment is increased by 50%). Included with this interest penalty imposed under the amnesty provisions, Section 6592 was amended to provide that if the Board finds that a person's failure to pay the tax under the amnesty program was due to reasonable cause and circumstances beyond that person's control, the person may be relieved of that 50% interest penalty. However, Section 7074 of the amnesty provisions specifically provides that no refund of this interest penalty is allowable.

Proposed Law

This bill would, among other provisions related to the Franchise Tax Board's amnesty program, amend Section 7074 of the Sales and Use Tax Law to delete subdivision (d) which provides that a taxpayer may not file a claim for refund for any amounts paid in connection with the interest penalty imposed.

The provisions of this bill would become effective immediately.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the FTB to address unintended consequences of the income tax amnesty-related provisions. The proposed amendment to Section 7074 is sponsored by the author.

2. **The August 30, 2005 amendments**, among other things related to the FTB, deleted the provision that prohibits a taxpayer from filing a claim for refund for any amount paid in connection with the interest penalty imposed under the Board's amnesty program. **The June 20, 2005 amendments** gutted and amended the bill to incorporate five income tax amnesty-related cleanup provisions. **The April 20, 2005 amendments** 1) added the provision that would impose a penalty equal to the amount of "qualified sales and use tax" not timely paid or remitted on depreciable property, 2) deleted the provisions that would have authorized the Board to provide certain information to the FTB, and 3) deleted the former penalty and audit provisions with respect to income tax deductions and credits. **The April 12, 2005 amendments** 1) added provisions requiring CPAs, PAs and California tax preparers to include Sales and Use Tax Law within the continuing education requirements, 2) added the provisions requiring county assessors to provide the roll to the Board and to include a use tax return with business property statements, 3) added the provisions authorizing the Board to provide county assessors information that would facilitate the assessors' administration of the property tax, and 4) added penalty and audit provisions with respect to income tax deductions and credits.
3. **The bill would delete an inequitable provision.** The amendments to Section 7074 would prevent some unintended consequences when taxpayers pay the 50% interest penalty before they request relief due to reasonable cause. Under current law, a person could be relieved of the penalty if the Board finds that his or her failure to pay the tax was due to reasonable cause, provided the person hasn't actually paid the penalty. If the person paid the interest penalty and then sought relief, the law would not allow a refund. This proposed change would correct this inequity. Also, it would put the 50% interest penalty on the same footing with the same relief and refund rights, as all other penalties in the law, including the other amnesty provisions which require the Board to double the penalties if the Board finds an underreporting or nonreporting of tax by any person who could have applied for amnesty. This would also ensure that taxpayers are afforded the same appeal rights for these penalties as any others.
4. **Related legislation.** AB 1614 (Klehs) was recently gutted and amended to incorporate income tax amnesty cleanup provisions. The bill was held in suspense in the Senate Revenue and Taxation Committee.

COST ESTIMATE

The cost to implement this bill would be insignificant.

REVENUE ESTIMATE

Enactment of this measure would not materially affect the state's revenues.

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This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.